APPROVED MINUTES* SUNNYVALE CITY COUNCIL TUESDAY, MARCH 24, 2009

6 P.M. SPECIAL COUNCIL MEETING (Study Session) - California High Speed Rail Project

7 P.M. COUNCIL MEETING

CALL TO ORDER

SALUTE TO THE FLAG

Lakewood Color Guard led the salute to the flag.

ROLL CALL

PRESENT: Mayor Anthony Spitaleri

Vice Mayor Christopher Moylan Councilmember John Howe Councilmember Ron Swegles Councilmember Melinda Hamilton Councilmember David Whittum Councilmember Dean Chu

ABSENT: None

STAFF PRESENT: City Manager Gary Luebbers

Assistant City Manager Robert Walker

City Attorney David Kahn

Director of Community Development Hanson Hom

Associate Planner Mariya Hodge Principal Planner Andrew Miner Planning Officer Trudi Ryan

Economic Development Manager Connie Verceles Interim City Clerk Katherine Bradshaw Chappelear

PUBLIC ANNOUNCEMENTS

Councilmember Chu stated the City accepts applications for boards and commissions on a continuous basis and announced current vacancies.

Teri Stewart announced upcoming events at the community garden.

CONSENT CALENDAR

Councilmember Whittum removed Item 1.A. from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Whittum seconded to approve the Consent Calendar with the exception of Item 1.A.

VOTE: 7-0

^{*}Approved as amended by Council on May 5, 2009.

1.A. Approval of Council Meeting Minutes of January 6, 2009

Councilmember Chu stated he will abstain from voting on this item since he was not in attendance at the meeting.

Public comments opened.

No speakers

Public comments closed.

Councilmember Whittum stated he removed Item 1.A. because there is an inaccuracy recorded in the minutes; therefore he will oppose approval of the minutes. Councilmember Whittum stated Council would be well served to have summary minutes moving forward.

Councilmember Hamilton inquired about Councilmember Whittum's concern and Councilmember Whittum explained the minutes credited an opinion to him that was inaccurate. Councilmember Hamilton suggested Councilmember Whittum request an amendment to the minutes. Councilmember Whittum stated he would make a motion.

MOTION: Councilmember Whittum moved to have summary Council meeting minutes henceforth, including Item 1.A.

Councilmember Hamilton stated if there were an inaccurate statement, Councilmember Whittum could share the information with Council and request an amendment.

Motion failed for lack of a second.

MOTION: Councilmember Swegles moved and Councilmember Hamilton seconded to approve Item 1.A.

VOTE: 4-2 (Councilmembers Whittum and Howe dissented, Councilmember Chu abstained)

- 1.B. Approval of Council Meeting Minutes of January 13, 2009
- 1.C. Approval of Revised Study/Budget Issues Workshop Minutes of January 23, 2009
- 1.D. Approval of Information/Action Items Council Directions to Staff

Fiscal Items

1.E. RTC 09-076 List of Claims and Bills Approved for Payment by the City Manager - List Nos. 444 & 445

Staff Recommendation: Council reviews the attached lists of bills.

Contracts

1.F. RTC 09-082 Award of a Contract for an Automated Fuel Management System (F0812-47) and Approval of Budget Modification No. 31

<u>Staff Recommendation</u>: Council awards a contract, in substantially the same form as the attached draft and in the amount of \$100,373, excluding applicable taxes, to MSI Fuel Management, Inc. to provide and install an automated fuel management system; approves a project contingency in the amount of \$5,019; and approves Budget Modification No. 31.

Other

1.G. RESOLUTION RTC 09-079

Approval of Resolution to Apply for an Infill Infrastructure Grant from the State of California Department of Housing and Community Development for \$6,660,640

<u>Staff Recommendation</u>: Council approves a Resolution and authorizes staff to apply, as a co-applicant with MPHC, for the Infill Infrastructure Grant (IIG) for infrastructure improvements for \$6,660,640 for the Fair Oaks Senior Housing Project.

1.H. RTC 09-075 Ratification of Council Intergovernmental Committee Appointments

<u>Staff Recommendation</u>: Council ratifies the re-appointments of Mayor Spitaleri to the National League of Cities Public Safety and Crime Prevention Policy and Advocacy Committee, and Vice Mayor Moylan to the National League of Cities Transportation, Infrastructure and Services Policy and Advocacy Committee.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None

PUBLIC COMMENTS

Margaret Lawson expressed condolences to the Department of Public Safety regarding recent incidents that took the lives of public safety officers in Oakland, California.

Councilmember Howe announced an upcoming event sponsored by the Fremont Union High School District Education Foundation.

PUBLIC HEARINGS/GENERAL BUSINESS

2. COUNCIL DISCUSSION

Council discussion of public meetings related to pending application from the Palo Alto Medical Foundation (PAMF) for their property on Old San Francisco Road

Councilmember Howe disclosed he met and specifically discussed this item with several members of the public and the president of the Palo Alto Medical Foundation (PAMF).

Councilmember Howe thanked his colleagues and staff for placing this item on the agenda for discussion. Councilmember Howe explained Council will not be discussing whether the facility should be built, but how Council can assist with effective communication between residents of the neighborhood, community members, staff and PAMF. The discussion will not address the merits of the project; instead, the discussion will focus on how to best hear all opinions.

Councilmember Whittum disclosed he met and held discussions with a neighborhood leader and Dr. Richard Slavin.

Councilmember Hamilton disclosed she met with PAMF and e-mailed with some neighbors. Councilmember Hamilton stated Council should give some direction as to what they are thinking of doing so members of the audience could react properly. Councilmember Hamilton suggested holding a City-sponsored meeting with Council and Planning Commission.

Councilmember Whittum disclosed he attended neighborhood meetings.

Councilmember Howe explained neighborhood meetings were held with Councilmembers in attendance. Councilmember Howe suggested additional meetings could be held after Council's discussion this evening. Councilmember Howe requested Councilmembers provide Council with a brief verbal overview of what occurred at the meetings.

Mayor Spitaleri responded both he and Councilmember Whittum attended a recent meeting sponsored by the PAMF and the meeting was well attended by the community and staff. Many questions were answered and PAMF representatives stated they would obtain answers on how to mitigate the concerns of residents. Mayor Spitaleri explained the PAMF plans to hold another meeting within a week.

Councilmember Whittum expressed support for an additional meeting as suggested by Councilmember Hamilton and suggested the Planning Commission be invited.

Vice Mayor Moylan explained the application from the PAMF is not before Council at this time and Council should not debate whether or not to approve the application. The issue this evening involves holding meetings to discuss a possible future application.

Director of Community Development Hanson Hom commented on the most recent meeting held by the PAMF. Director Hom stated Dr. Slavin clarified a number of aspects of the proposed facility and offered mitigating efforts for some of the residents' concerns.

Councilmember Howe verified with Director Hom the Planning Commission will hold a public hearing and offer a recommendation on the final Environmental Impact Report (EIR) in May with Council action in June. Councilmember Howe verified with Director Hom that the dates for consideration were moved forward approximately 30 days from the originally scheduled date.

City Attorney David Kahn cautioned Council against setting any meeting between the Planning Commission, Council and the applicant since this application will come before both groups on the merits of the application. City Attorney Kahn explained it is appropriate

for Council to inquire about meetings between the neighbors and the applicant and Council may also attend any open public meetings.

Public hearing opened at 7:32 p.m.

Josh Martin suggested Council encourage PAMF to reconsider the site on El Camino which was previously an auto dealership. Martin stated the communication at the recent meeting between PAMF and the neighbors was one-sided and it appeared decisions were already made. Martin stated the proposed facility is planned for the wrong area and urged Council not to approve any zoning change for the area.

Mayor Spitaleri explained Council was reviewing whether there are enough meetings and the quality of the meetings. Council was not making decision on other issues this evening.

Kristin Beardsley urged Council to host a meeting between the City, residents and representatives from PAMF. Beardsley explained the quality of communication is poor and residents would like representatives from the City to attend.

Gustav Larsson stated the quality of the meetings tended to be a one-way dialogue; however, more recently residents were able to converse more effectively with representatives from PAMF. Larsson expressed concern that the better communication occurred too late in the process and it may be too late for changes to the project.

Jeff Jones stated the more communication the better and encouraged Councilmembers to walk the neighborhoods and speak to the residents regarding this proposed project. Jones stated the residents established a Web site named *Sunnyvale CARZ* which provides updates on the proposed project and allows residents to make comments.

Councilmember Whittum explained Council could walk through the neighborhood together by noticing the neighborhood walk as a Council meeting. Jones stated the neighbors would welcome a meeting with Council walking the neighborhood as soon as possible.

Councilmember Howe verified with Jones there should be more meetings between now and when this project is reviewed by the Planning Commission in May.

Councilmember Howe inquired as to the geographical area that will need to be notified of the process. Jones suggested the Heritage District Neighborhood Association should be included in the outreach regarding this project.

Vice Mayor Moylan and Councilmember Hamilton stated they will walk the neighborhood.

Councilmember Hamilton confirmed with Jones the goal of a group meeting with the Planning Commission and Council would be to have a positive meeting to identify possible solutions. Jones suggested a couple of planning commission members and Council meet to develop an agenda for the neighborhood meeting.

Arthur Schwartz explained he attended the neighborhood meetings and spoke to Dr. Slavin regarding possible solutions to some of the concerns. Schwartz stated he noted several incidents in which Dr. Slavin was not able to answer questions posed by residents

and it was his impression that PAMF held these meetings because they had to, not because they truly wanted to provide solutions to community concerns.

Schwartz expressed concern about the relationship and control of Sutter Health in regard to PAMF and this project. Schwarz stated he supported PAMF designing a project within the existing zoning.

Public hearing closed at 7:55 p.m.

Councilmember Howe requested residents be notified of the process and the exact dates of the upcoming meetings. Councilmember Howe requested staff return to Council with a report on how staff plans to publicize the dates of the meetings, when reports will be available, and exact dates of the meetings when this project will be considered by the Planning Commission and Council. Councilmember Howe stated the staff report could be an informational report to Council or it could placed on the agenda.

MOTION: Councilmember Whittum moved to change the April 21, 2009 Council meeting to a special Council meeting in the neighborhood.

City Attorney Kahn explained since this item will be before Council in a quasi-judicial hearing, the neighborhood Council meeting as proposed would not be allowed. City Attorney Kahn stated Council may attend meetings between PAMF and the neighbors as observers.

Councilmember Whittum explained some reports have inaccuracies and questioned how to address that issue. City Attorney Kahn indicated it was best to explain the inaccuracies to Council. Director Hom explained the inaccuracies would be corrected in the final EIR report to Council.

Councilmember Howe verified with City Manager Gary Lubbers the report from staff will be released and posted on the Web site one week prior to the Planning Commission meeting.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to direct staff to come back to Council with a report identifying the Council and Planning Commission meeting dates, the process to be used to address this issue, dates when reports will be available to the public and any budget needs to disseminate this information. Additionally, the staff report for the Planning Commission shall be released and posted on the City's Web site one week prior to the meeting.

Community Development Director Hom explained when the Planning Commission meeting is noticed, staff will also notice the Council meeting, thereby allowing for advanced notification.

Community Development Director Hom explained staff maintained and shared with the residents a schedule for this project.

Councilmember Swegles inquired as to what is unique about this project that would warrant special attention, and Director Hom explained this project has a higher level of

staff involvement. Councilmember Swegles stated there was high level of citizen concern over the Mary Avenue overpass and inquired if the same amount of special attention was given to that project. Director Hom stated he could not address the public hearing process for that project since it was a Department of Public Works project.

Councilmember Swegles stated many large groups came before Council on different occasions and they did not receive this type of special treatment. Councilmember Swegles stated he was not discounting the concerns of the neighborhood, but it appeared this project was receiving favoritism over other large projects such as the Mary Avenue Overpass.

Councilmember Whittum stated supported the motion because communication was important and it created a win-win for all involved.

VOTE: 5-2 (Vice Mayor Moylan and Councilmember Swegles dissented)

3. RTC 09-080 2008-0860 – Adopting Taaffe-Frances Design Guidelines (Study Issue)

Councilmember Hamilton recused herself because she owns property in the area. Councilmember Hamilton disclosed she attended an outreach meeting with staff as a member of the public and also attended a Heritage Preservation Commission meeting and provided input as a citizen. Councilmember Hamilton stated she had not held any other discussion with staff, Council, or any Heritage Preservation Commission members.

Councilmember Hamilton left the dais at 8:15 p.m.

Associate Planner Mariya Hodge presented the staff report.

Mayor Spitaleri inquired if driveways could be modified to allow vehicles to get into their garages. He explained a modification may be needed to expand the driveways in order to allow cars to access garages in this area. Associate Planner Hodge responded staff would work with homeowners to figure out what could be done with the driveway situations on a case-by-case basis. Associate Planner Hodge explained staff attempted to juggle flexibility along with maintaining the look of the neighborhood.

Public hearing opened at 8:20 p.m.

Melinda Hamilton, resident and homeowner on Taaffe Street, thanked staff for putting together the proposed guidelines. Hamilton stated she supported the staff recommendation and urged Council to approve Alternative 7 which will preserve the trees in this area.

Hamilton suggested that residents who apply for permits online or in person be sent a copy of these guidelines automatically.

Jeanine Stanek, President of the Heritage Preservation Commission, stated the commission voted in favor of the staff recommendation. Stanek stated the commission is concerned how the guidelines will be transmitted to residents of the area and suggested

an addition to Alternative No. 5, which would be to send copies of the guidelines to the real estate brokers in the area as a means of notifying new homeowners.

Vice Mayor Moylan stated state law requires real estate agents to inform prospective buyers of any aspects of a property that would affect its value. Vice Mayor Moylan inquired if that fact would satisfy the commission. Stanek responded the neighborhood has historical designation, but the houses do not, and several real estate agents were not aware that the area was a historical district. Stanek stated the commission is in favor of flagging those who come in or apply online for permits, and sending them a copy of the guidelines.

Adam Montgomery, Government Affairs Director of Silicon Valley Association of Realtors, stated when a buyer purchases a home, they are informed through contract disclosures that alterations to the home must be reviewed by the City.

Public hearing closed at 8:29 p.m.

Mayor Spitaleri inquired if signs could be developed to designate the area as a heritage district and homes in that area must abide by certain guidelines. Director Hom explained staff can work with real estate agents in the area to come up with some language to add to their listings for properties when they are offered for sale.

Councilmember Howe verified with Director Hom the affected properties were already tagged and when a permit is pulled the owner will receive a copy of these guidelines

MOTION: Councilmember Chu moved and Councilmember Howe seconded to approve staff recommendation: Alternatives 1, 5 and 7:

Alternative 1: Council adopts updated design guidelines for the Taaffe-Frances Heritage Housing District as provided in Attachment D.

Alternative 5: Council directs staff upon adoption of the design guidelines, to provide all homeowners in the neighborhood with notification of the adoption and information on where a copy of the guidelines can be obtained.

Alternative 7: Council directs staff to address preservation of Magnolia street trees on South Taaffe Street and street species selection on South Frances Street as part of the ongoing effort to prepare an Urban Forestry Management Plan for the City.

Councilmember Howe explained when a buyer purchases a property, there are three different sections within the real estate disclosures which address alterations to a property and the need for the homeowner to check with the City prior to making any changes.

VOTE: 6-0 (Councilmember Hamilton recused)

4. ORDINANCE 2007-0346 – Amendment to Title 19 to Implement the Citywide Green RESOLUTION Building Policies and Budget Supplement RTC 09-081

Councilmember Hamilton returned to the Council Chambers at 8:34 p.m.

Principal Planner Andrew Miner presented the staff report.

Councilmember Hamilton stated the staff report exempts heritage buildings from the code and verified with Principal Planner Miner that a heritage building would be considered and specifically designated to be a landmark resource building.

Councilmember Hamilton expressed concern about the allowable incentive of 5 percent lot coverage given to homes over 1500 square feet in size, because it could raise the Floor Area Ratio (FAR) to over 45 percent, which would trigger automatic Planning Commission approval. However, it is not clear if the FAR would be considered for Planning Commission approval when the incentive is given.

Councilmember Howe requested Principal Planner Miner add townhouses and condominiums to the multi-family housing section.

Councilmember Howe verified with Principal Planner Miner the policies will not apply to mobile home parks.

Vice Mayor Moylan verified with Principal Planner Miner the staff recommendation includes Administrative Procedures, Option Two, on page nine of the staff report.

Vice Mayor Moylan verified with staff the ongoing cost of this program will now be an item that will receive a priority rating and will be included in the budget every year.

Vice Mayor Moylan verified with staff if someone had an objection to the verdict reached on their project, they may appeal the decision to the Board of Building Code Appeals.

Councilmember Whittum verified with Principal Planner Miner the meaning of hardship or difficulties pertains to obtaining the required threshold level of the green-building practices. Principal Planner Miner stated a hardship would be considered a technical difficulty.

Councilmember Whittum verified with Principal Planner Miner if a project is appealed to the Board of Building Code Appeals, the board's decision would be final. Director Hom explained an appeal would be technical in nature; therefore, it would not be appealed to Council.

Mayor Spitaleri verified with Principal Planner Miner the code has an exemption for those residents who retrofit their home to make it handicapped accessible.

Councilmember Hamilton noted private, non-residential facilities over 5,000 feet are being offered an incentive for Leadership in Energy and Environmental Design (LEED) Gold standard of either a 10 percent FAR increase or a 10-foot building height increase and inquired as to why a developer would chose one incentive over the other. Principal Planner Miner explained there are situations when a developer may need the height adjustment for the type of building configuration. Principal Planner Miner explained Council approved the incentives in August 2008.

Councilmember Hamilton asked about the rationale behind offering incentives to new construction, but not for existing renovations. Principal Planner Miner explained new buildings are required to reach a certain level; therefore, incentives are needed but existing buildings are not required to reach any level.

Councilmember Whittum verified with Principal Planner Miner it was City policy to direct new office development within Moffett Park; therefore, they were being offered higher incentives. Principal Planner Miner explained one item on the LEED checklist is location and a certain number of points were given for locating near transit.

Councilmember Whittum asked what would be the result if incentives only applied to projects located near transit. Director Hom explained developments located outside of transit areas may not seek to implement the higher LEED standards.

Public hearing opened at 9:01 p.m.

Paul Stewart, Sunnyvale Chamber of Commerce, stated the Chamber supported implementing green-building practices and standards; however, the Chamber members are concerned over how the practices will be implemented. Stewart stated the Chamber recommended the following:

- Implementation of the standards for January 1, 2010 or July 1, 2010 if there is concern over the current economic situation;
- Council adopts recommendation for new definitions;
- Council approves Alternative 2 which meet the design intent of the standards;
- Council adds themselves as the final arbitrators in an appeal process for hardship and feasibility, as opposed to stopping at the Board of Building Code Appeals; and
- Council uses the priority ranking tool to select a service to be cut to maintain the balanced long term fiscal plan. However, if a new fee table is generated, it should be capped at five percent of development service fees.

Barbara Fukumoto offered her support of the green-building policies and urged Council to stay closer to their original intent and implement the green-building ordinance this year. Fukumoto stated it is possible that the green-building standards may help the economy.

Councilmember Swegles verified with Fukumoto it was her belief that green buildings do not have to cost more. Fukumoto suggested phasing in the guidelines at least for new construction right away.

Councilmember Hamilton inquired why staff would offer an incentive of 10 percent more FAR if building a smaller facility would be more environmentally friendly. Principal Planner Miner responded allowing additional square footage was an attempt to offset some of the cost to achieve a higher LEED rating level which would create a more efficient building.

Arthur Schwartz explained he opposed offering incentives. The incentive should be that a more efficient building will save the owner money over time. Schwartz stated FAR percentages were put in place to protect the neighbors, yet adoption of the incentives takes away the protection already in place by allowing larger FAR ratios or higher building heights.

Adam Montgomery, Government Affairs Director of Silicon Valley Association of Realtors, stated the association did not officially have a position on this proposal. Montgomery asked Council to consider whether the requirement only applies to the improvement or to the entire structure once it hits the threshold. Montgomery expressed concern if the requirement were for the entire structure since that may discourage homeowners from

obtaining permits. Montgomery stated Sunnyvale would be the fifth jurisdiction in the area to create a green-building ordinance. Montgomery explained he had not heard any complaints regarding the current ordinances that are in place in the surrounding areas.

Harriet Rowe, Chair of the Planning Commission, spoke on her own behalf and stated the commission agreed with Commissioner McKenna who suggested the City detail the intent of the ordinance and make the ordinance easier to read and understand. Rowe suggested the City look at how they want to define the word sustainability and the ordinance needed definitions of LEED and USGBC. Rowe stated the commission suggested a checklist of what the City requires for citizens who are remodeling their homes. Rowe stated the staff report is missing information on the impact of the transportation problems and discussion on the issues that may arise when a duplex owner wants to work on only one half of the property when the duplex met the threshold to retrofit the entire building to green standards.

Public hearing closed at 9: 24 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve Alternative No.2: Council approves Alternative 1 with a later effective date, such as July 1, 2010, as determined by the Council to respond to the current economic conditions. Alternative No.1: Council action on the following:

- a. Council introduces the ordinance, which includes zoning code revisions (including a new section 19.39 Green Building Regulations Attachment B).
- b. Council adopts a resolution establishing the Green Building Tables (Attachment D).
- c. Council makes the effective date of the new requirements and ordinance January 1, 2010 (to be determined by Council)
- d. Council approves a motion to remove Council Policy 1.1.9 effective January 1, 2010.
- e. Council adopts a resolution amending the Moffett Park Specific Plan effective January 1, 2010.

Vice Mayor Moylan stated as a sponsor of the study issue, he is happy to see it moving forward. The intent of the ordinance and the definition of sustainability were included and are listed on page one of the ordinance. Vice Mayor Moylan responded to the question of why incentives are needed, explaining the developers will not receive the long-term benefit of green building practices, yet they are the ones paying the additional fees up front; therefore, an incentive is needed. The tenants or homeowners are the ones who will realize the savings. Vice Mayor Moylan stated these guidelines are what can be done locally, but it seems to be inevitable that more stringent standards will be required by the state or federal government. Vice Mayor Moylan stated he supported a six-month delay, because he anticipated a larger change in the economy in the next six months. Vice Mayor Moylan explained citizens previously suggested adopting this ordinance.

Councilmember Hamilton stated she disagreed with offering incentives and if stricter standards were on the horizon, then the City should adopt those now. Councilmember Hamilton stated it does not make sense to circumvent the City's own zoning in order to allow incentives. Councilmember Hamilton stated the success of Moffett Park proved the City did not need to offer incentives. Councilmember Hamilton stated she would not support the motion.

Councilmember Swegles offered a friendly amendment to require green-building requirements for new construction as of January 1, 2010, and require green-building requirements for remodels as of July 1, 2010.

Friendly amendment accepted by Vice Mayor Moylan.

Councilmember Whittum stated that from a sustainability standpoint, Council's job is to plan the City for transit and to put density near transit. Councilmember Whittum stated he was not in favor of imposing onerous requirements and specifically was not in favor of an FAR incentive unless it is near transit. Councilmember Whittum stated the issue of hardship is vague because the technical requirements are also vague. Councilmember Whittum supported having decisions made by the Board of Building Code Appeals subject to appeal to Council. Councilmember Whittum stated there were good aspects of the requirements, but more study and discussion is needed.

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Howe seconded to amend the original motion to allow decisions made by the Board of Building Code Appeals maybe appealed to Council.

Vice Mayor Moylan explained as written, this ordinance was consistent with all other ordinances and no other decisions of the Board of Building Code Appeals may be appealed to Council. Vice Mayor Moylan stated he opposed the amendment.

Councilmember Whittum stated the Board of Building Code Appeals has to strictly follow the ordinance and the ability to appeal these decisions needs to be available to assist with the changing standards.

VOTE: 4-3 (Councilmember Swegles, Vice Mayor Moylan and Mayor Spitaleri dissented)

FORMAL AMENDMENT: Councilmember Whittum moved to amend the original motion to apply green-building requirements only to new construction.

Amendment failed for lack of a second.

Restated MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve

Alternative No.2: Council approves Alternative 1 with a later effective date, such as July 1, 2010, as determined by the Council to respond to the current economic conditions.

Alternative No.1: Council action on the following:

- a. Council introduces the ordinance, which includes zoning code revisions (including a new section 19.39 Green Building Regulations Attachment B).
- b. Council adopts a resolution establishing the Green Building Tables (Attachment D).
- c. Council makes the effective date of the new requirements and ordinance January 1, 2010 (to be determined by Council)
- d. Council approves a motion to remove Council Policy 1.1.9 effective January 1, 2010.
- e. Council adopts a resolution amending the Moffett Park Specific Plan effective January 1, 2010

with

• Council approved green-building requirements for new construction as of January 1, 2010, and requires green-building requirements for remodels as of July 1, 2010

 Council approves decisions made by the Board of Building Code Appeals regarding green-building requirements may be appealed to Council

Interim City Clerk Katherine Bradshaw Chappelear read title of the ordinance into the record.

VOTE: 3-4 (Councilmembers Whittum, Chu, Howe and Hamilton dissented).

Motion failed.

MOTION: Councilmember Hamilton moved to approve Alternative No.1 with changes to Section B, adopting the resolution establishing the Green Building Tables without the incentives.

Motion failed for lack of a second.

MOTION: Councilmember Whittum moved to take the issue to a future Council Study Session.

Motion failed for lack of a second.

MOTION: Councilmember Swegles moved and Vice Mayor Moylan seconded to approve Alternative No.1: Council action on the following:

- a. Council introduces the ordinance, which includes zoning code revisions (including a new section 19.39 Green Building Regulations Attachment B).
- b. Council adopts a resolution establishing the Green Building Tables (Attachment D).
- c. Council makes the effective date of the new requirements and ordinance January 1, 2010
- d. Council approves a motion to remove Council Policy 1.1.9 effective January 1, 2010.
- e. Council adopts a resolution amending the Moffett Park Specific Plan effective January 1, 2010

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Howe seconded to amend the original motion to allow decisions made by the Board of Building Code Appeals may be appealed to Council.

VOTE: 4-3 (Councilmember Swegles, Vice Mayor Moylan and Mayor Spitaleri dissented)

Restated MOTION: Councilmember Swegles moved and Vice Mayor Moylan seconded to approve Alternative No.1: Council action on the following:

- a. Council introduces the ordinance, which includes zoning code revisions (including a new section 19.39 Green Building Regulations Attachment B).
- b. Council adopts a resolution establishing the Green Building Tables (Attachment D).
- c. Council makes the effective date of the new requirements and ordinance January 1, 2010
- d. Council approves a motion to remove Council Policy 1.1.9 effective January 1, 2010.
- e. Council adopts a resolution amending the Moffett Park Specific Plan effective January 1, 2010

with

 Council approves decisions made by the Board of Building Code Appeals regarding green-building requirements may be appealed to Council Interim City Clerk Katherine Bradshaw Chappelear read title of the ordinance into the record.

VOTE: 4-3 (Councilmembers Whittum, Howe, and Hamilton dissented)

Mayor Spitaleri polled Council for continuing with the agenda. Councilmember Hamilton requested Council continue with the agenda but take a five minute break. Mayor Spitaleri agreed and requested Council return to the dais at 9:50 p.m.

5. RTC 09-073

2008-1119 - AT&T Mobility [Applicant] Roman Catholic Welfare Corp of San Jose [Owner]: Appeal by a neighbor of the decision by the Planning Commission approving a Use Permit for a new tree pole with six panel antennas, two future microwave dish antennas and ancillary ground equipment. The property is located at 1399 Hollenbeck Avenue (at Cascade Dr.) in a P-F (Public Facilities) Zoning District

Councilmember Whittum recused himself because he is a member of the Resurrection Parish Church located at 1399 Hollenbeck Avenue.

Councilmember Whittum left the Council Chambers at 9:55 p.m.

Planning Officer Trudi Ryan presented the staff report.

Councilmember Swegles inquired if there was any new information that was not presented at the Planning Commission meeting. Planning Officer Ryan explained the appellants will express their level of concern over the individual impacts. Staff requested the applicants supply additional photo simulations from other viewpoints, which were not provided to the Planning Commission.

Vice Mayor Moylan stated the level of coverage for AT&T was discussed at the Planning Commission meeting and is the motivation for this application. Vice Mayor Moylan verified with Planning Officer Ryan that a map of AT&T's coverage was not included in the staff report; however, one was provided to Council.

Planning Officer Ryan distributed before and after coverage maps for AT&T.

Public hearing opened at 10:05 p.m.

Adel Habib stated the Planning Commission report and third party technical report by TRK Engineering have many errors and ommissions. Habib pointed out the errors and omissions to Council: FCC has not determined this proposal meets the Federal Communications Commission (FCC) requirements; and surrounding facilities were not taken into account.

Vice Mayor Moylan requested the city attorney to comment on the basis for a Council decision. City Attorney Kahn explained the Federal Communications Act addresses what local agencies may do with respect to these types of telecommunication facilities. A local agency does not have the jurisdiction to set more stringent standards than what is set by

the FCC. Adequate coverage is an issue to be decided by Council and Council may also set reasonable restrictions regarding aesthetics provided the restrictions do not prohibit the vendor from providing service.

Vice Mayor Moylan verified with City Attorney Kahn if Council is presented with evidence that there is a gap in coverage, Council is required to either grant the permit or allow an antenna in anther location that would allow for adequate coverage.

Vice Mayor Moylan verified with City Attorney Kahn if Council determines there is adequate coverage for the area, then Council would be able to deny the permit.

Kenneth Kwong expressed concerns and explained the proposed structure will adversely affect property values of the area and inquired as to what type of studies were done regarding this issue. Kwong stated if an appraisal of the area has not been done then one should be done taking the tower into account.

Mei-Ling Stefan stated her concerns about the reports and the dangers of the generators that will be used. Should Council approve this project, Stefan requested a condition be added to eliminate a diesel-powered generator unless the applicant provides proof that the generator has been approved by the Bay Area Air Quality Management District. Stefan requested a copy of the approval be available for public viewing.

William Scott stated two other cellular towers in the area are not noticeable. However, the proposed tower will be noticeable due to its height of 65 feet with surrounding trees at 35 feet. If this is approved, it will not blend in with the neighborhood and Scott questioned the need for such a tall tower.

Kathleen Tobias stated she lives in a two-story home across from the proposed tower. Tobias stated she supported the proposed antenna and was not offended by the fake tree. Tobias stated she questioned the installation of the proposed antenna would devalue the neighborhood.

Peter Tobias stated he supported the antenna because the current cellular coverage is very poor.

Andy Anderson stated there was a map coverage conflict and proposed moving the antenna a mile to the west, which would place the antenna on commercial property. Anderson stated chemicals are used at these facilities and the proposed antenna would be about 10 feet from the school. Anderson stated an independent firm with proper credentials should be hired to review the environmental safety.

Vice Mayor Moylan agreed there are two confusing maps regarding coverage areas.

Anderson stated if the antenna were moved to the west, it would benefit Sunnyvale because it would be more central to the low-reception coverage areas.

Kim Reed stated concerns about aesthetics since the fake tree would be 25 to 35 feet higher than any tree around it. Reed questioned AT&T's need for the poles instead of

using existing sites for placement and mentioned noise concerns. Reed said Title 19 states antenna farms are not to be created, which has been defined as two or more antennas in an area. This area already has two antennas.

Srinivasan Kumar stated the tower is redundant because there is adequate coverage in the area and expressed concern about lower property values and noise.

Coleen Hausler stated opposition to the tower due to the excessive height, noise, esthetics, chemicals and associated ground equipment. Hausler requested Council reconsider approval of the Use Permit.

Gerald Reed stated the church approached AT&T about this site in order to obtain another source of revenue. Reed explained this tower could be located on a public site and the revenue would become public funds received by the City. Reed stated the antenna would be well hidden if the pole were placed at the nearby Serra Park.

Councilmember Hamilton explained the City completed a study issue on placement of poles. However, since the City does not provide the infrastructure, Council has to wait for projects to come before them.

Jennifer Walker, applicant, stated AT&T is attempting to provide better coverage where there is no coverage. Walker explained their studies included all the antennas on the site and they performed a cumulative report. Walker stated coverage is constantly changing and the coverage map on the Web site does not always get updated. Walker explained extensive research was completed prior to submitting an application and AT&T would not spend time and money on an area that does not need an antenna. Walker stated AT&T was not proposing a generator. Walker stated she included a statement from their engineer as to why alternative sites would not work for the antenna. Walker stated the church did not approach AT&T; AT&T approached the church. Walker stated they were working with staff to make the pole as natural looking as possible.

Councilmember Hamilton thanked Walker for clearing up the map discrepancy and stated it appears that the map from the Web site is very simplified compared to what Walker submitted to Council.

Councilmember Hamilton inquired as to the use of the microwave dishes and Walker responded they would like to have them approved so that they may be used for future sites that may need temporary assistance.

Councilmember Hamilton explained Council can only review the aesthetics and this antenna will be quite a bit higher than the surrounding trees. Councilmember Hamilton verified with Walker AT&T does need the height for their antennas to cover a larger area and without the height, AT&T would have to add another antenna.

Mayor Spitaleri verified with Walker that they will not have any generators. Walker noted the equipment cabinets do contain batteries.

Vice Mayor Moylan asked why this site was chosen over the available commercial sites and Walker responded the commercial properties were relatively close to an existing site

and would not allow for the coverage in areas that need service. Additionally, the site would not allow for the needed height. The DeAnza Square site is also adjacent to residential but did not offer a buffer. Serra Park is further south and would not reach the areas to the north that need service. Walker stated the church site allowed for the antenna to be centrally located with a good buffer from residential areas.

Public hearing closed at 11 p.m.

Mayor Spitaleri verified with Planning Officer Ryan the 65-foot antenna height is inclusive of the tree crown which is about five feet higher than the top of the antenna.

Vice Mayor Moylan clarified with Planning Officer Ryan staff does not view this antenna as part of an antenna farm. The two antennas that already exist in this area are well camouflaged; therefore, the proposed antenna would not meet the definition of an antenna farm.

MOTION: Councilmember Swegles moved and Councilmember Hamilton seconded to approve Alternative No.2: Council denies the appeal and adopts the Negative Declaration and approves the Use Permit with attached conditions.

Councilmember Hamilton stated she seconded this motion in order to allow further discussion.

Councilmember Swegles stated AT&T assured Council by the studies they provided that coverage is lacking in areas served by the proposed antenna. Council's other area of review is aesthetics and staff and the Planning Commission agreed the proposed pole will blend in with the area.

Councilmember Howe stated he would not support the motion based on the aesthetics of the pole.

VOTE: 4-2 (Councilmembers Howe and Hamilton dissented, and Councilmember Whittum recused)

6. RESOLUTION Approve Downtown Sunnyvale Business Improvement District RTC 09-074 Annual Report for FY 2008/2009 and Adoption of the Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District for FY 2009/10

Councilmember Whittum returned to the dais at 11:07 p.m.

Councilmember Whittum recused himself because of the proximity of his home is within 500 feet to the Downtown Sunnyvale Business Improvement District.

Councilmember Whittum left the dais at 11:08 p.m.

Economic Development Manager Connie Verceles presented the staff report.

Councilmember Howe verified with Manager Verceles the State of the Business Improvement District (BID)/Sunnyvale Downtown Association (SDA) Report was reviewed by staff, but must be completed by the BID board. Councilmember Howe verified with Manager Verceles staff believes the report meets the reporting requirements.

Public hearing opened at 11:10 p.m.

No speakers

Public hearing closed at 11:10 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative No.1: Council approves the BID Annual Report for FY 2008/09 and adopts the Resolution of Intention and schedules a public hearing for April 21, 2009 to reauthorize the Business Improvement District for FY 2009/10 for Downtown Sunnyvale.

VOTE: 6-0 (Councilmember Whittum recused)

Councilmember Whittum returned to the Council Chambers at 11:11 p.m.

<u>COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE</u> <u>ASSIGNMENTS</u>

Vice Mayor Moylan stated while in Washington DC he followed up with multiple elected officials on the issue of banks slowing construction, and that Senator Boxer, Congresswoman Eshoo and Congresswoman Lofgren indicated they would do what they could to free up lending.

Councilmember Swegles reported on Bay Area Water Supply and Conservation Agency (BASCWA) and stated they were working on a contract with the San Francisco Public Utilities Commission.

Mayor Spitaleri stated while in Washington, D.C., he participated in the Public Safety and Crime Committee. There are two programs that could help the City: "Cops" which allows cities to hire police officers for three years without having to match funds; and Safer Act which provides supplement for a firefighter for two years without the need for matching funds. The committee also discussed \$250 million in grants for building new fire stations.

Mayor Spitaleri stated he met with representative from NASA about Hangar One and verified NASA would keep their fly-in trips below what they are allowed.

Mayor Spitaleri stated he met with Congresswoman Eshoo and spoke about the issues at Onizuka. Congresswoman Eshoo committed to arranging a meeting with all the stakeholders to facilitate a meaningful discussion and to assist with moving this project forward.

Councilmember Hamilton announced she joined the mayor in meeting with the delegation from City of Sunnyvale's Sister City Suzhou, China. Councilmember Hamilton stated the conversation centered on eminent domain and was very interesting.

Councilmember Whittum announced a study session was held on the California High Speed Rail Project and explained public comments can be received until April 6, 2009. Councilmember Whittum inquired if staff will submit an information item back to Council regarding the comments made by the City. City Manager Luebbers stated the next Council meeting will be on April 7, which is after the comment deadline. Therefore, staff will soon submit an information item to Council.

NON-AGENDA ITEMS & COMMENTS

COUNCIL:

Councilmember Swegles offered congratulations to Vice Mayor Moylan for receiving his Silver Certificate at the National League of Cities. The certificate requires a certain number of classes be completed in order to be certified Silver.

Councilmember Swegles thanked Councilmember Howe and his wife Jody for their assistance during his recent hospital visit in Washington, D.C. Councilmember Swegles also thanked his wife who stayed by his side and Mayor Spitaleri for his visit at the hospital.

Vice Mayor Moylan stated Councilmember Swegles also received the Silver Certificate at the National League of Cities and offered his congratulations.

STAFF: None

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of Housing and Human Services Commission Meeting of February 12, 2009
- Draft Minutes of Bicycle and Pedestrian Advisory Commission Meeting of February 19, 2009
- Minutes of Housing and Human Services Commission Meeting of February 25, 2009
- Draft Minutes of the Board of Library Trustees Meeting of March 2, 2009
- Summary of Joint Study Session of March 10, 2009 with Housing and Human Services Commission and Planning Commission on 2009-2014 Housing Sub-Element Update
- Summary of Study Session of March 10, 2009 National League of Cities Congressional City Conference Information
- RTC 09-077 Opportunity for Council to appeal decisions of the Planning Commission of March 9, 2009 and the Administrative Hearing of March 11, 2009
- RTC 09-078 Board and Commission Resignation (Information Only)

<u>ADJOURNMENT</u>

Mayor Spitaleri called for a moment of silence in honor of the four Oakland police officers who lost their lives while protecting their community. Mayor Spitaleri adjourned the Council meeting at 11:22 p.m. in honor of the four Oakland police officers.

Kathleen Franco Simmons	Date	
City Clerk		